

Epic Games, Inc. v. Apple Inc.

Expert Testimony of Professor Francine Lafontaine

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Principles of Market Definition



- Market definition starts with identifying reasonable substitutes for the product at issue
- We look at substitutes from the **perspective of customers** of the product
 - The customers in this case are consumers and developers
 - The focus is on substitution, **not** conduct
- The market Epic defines is both **too broad** and **too narrow**

An “iOS App Distribution” Market Is Too Broad

- ✗ All iOS app transactions are **not good substitutes** for one another
 - Other types of apps (food, maps, coupons, weather, dating, messengers...) do not meet the same consumer need
 - A spreadsheet app is not a reasonable substitute for a cooking app
- ✗ Clustering “all apps” is not appropriate given market conditions
 - Dr. Evans does not attempt to define a cluster market

Clustering Is Not Appropriate Where Competitive Conditions Differ



- B2B customers went mostly to Staples and Office Depot for various office supplies (pens, paper pads, file folders, etc.)—could be clustered
- B2B customers could (and did) go elsewhere to buy ink and toner—specifically, printer and copier manufacturers—so ink and toner could not be included in cluster market
- Ink and toner faced different competitive conditions—very much like game transactions

Clustering Is Not Appropriate Where Competitive Conditions Differ: Wine Sold at the Supermarket Example



Limits of a “SSNIP” Without Proper Data



Role of the
hypothetical
monopolist test



Dr. Evans’
“SSNIP tests”
are uninformative

Dr. Evans' Alleged Single-Sided "SSNIP Tests" Are Flawed

- ✗ Dr. Evans agrees that the App Store is a two-sided transaction platform, but his SSNIP tests do not account for indirect network effects
- ✗ The "tests" ignore the most important type of substitution available to consumers and to developers—the ability to shift transactions to a website or other platform
- ✗ Dr. Evans does not use prices that are actually charged for the products he tests
- ✗ Dr. Evans asserts, with no real world data on price changes, that there would be no switching from a price increase

The Foremarket/Aftermarket Framework Does Not Apply

The foremarket/aftermarket framework does not apply because...

- Consumers do not need to incur the cost of a new device or even switch devices in order to transact
- Game consumers and game developers multi-home and can reach each other outside of the App Store (e.g., web browsers, computers, consoles)

Anticompetitive Concerns are Not Present, Even Assuming A Foremarket/Aftermarket Framework

To determine whether anticompetitive concerns arise in cases where the foremarket/aftermarket scenario might apply, economists consider...

- Whether there is competition in an appropriately defined foremarket
- Whether information is available about aftermarket terms/costs before making foremarket purchase
- Whether there are unexpected adverse changes in aftermarket terms

Epic Has Failed to Identify a Relevant Product Market Reflecting Customer Substitution Possibilities



Epic's product market is:

- Too broad because it includes all apps that are not reasonable substitutes; and
- Too narrow because it fails to take into account all of the substitution possibilities—from the perspective of consumers of games and game developers— for game transactions
 - If transactions are substitutable across platforms, there can be no iOS-only market